Supreme Court, U.S.
FILED
JAN 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1049

SUPREME COURT OF THE UNITED STATES

October Term, 1985

CHRYSLER PLASTIC PRODUCTS CORPORATION,

Petitioner,

vs.

FEDERICO EREBIA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals For the Sixth Circuit

---

DENNIS E. MURRAY
300 Central Avenue
Sandusky, Ohio 44870
Telephone: 1-419-627-9700
Counsel for Respondent

MURRAY & MURRAY CO., L. P. A.
300 Central Avenue
Sandusky, Ohio 44870
Telephone: 1-419-627-9700
Of Counsel

BEST AVAILABLE COPY

TABLE OF CONTENTS

Table of Authorities. 2

Brief in Opposition to Petition for a Writ 3

Statement of the Case 4

Facts 5

Merits of Punitive Damages. 6

Conclusion. 10

Certification 11

TABLE OF AUTHORITIES

Cases

Bishop v. Grdina
20 Ohio St.3d 26 (1985). 7, 8

Richard v. Hunter
151 Ohio St. 185 (1949). 8, 9

Seasons Coal Co., Inc.
v. City of Cleveland
10 Ohio St.3d 77 (1984). 8

Statutes

Federal Statutes:

15 Am.Jur. 707 9

No. 85-1049

SUPREME COURT OF THE UNITED STATES

October Term, 1985

CHRYSLER PLASTIC PRODUCTS CORPORATION,

Petitioner,

vs.

FEDERICO EREBIA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals For the Sixth Circuit

---

This Court should decline the invitation for a writ of certiorari. The facts of this case have been passed upon by a jury, the trial judge, and the Court of Appeals, all of whom have decided that Chrysler, at its Sandusky, Ohio, plant, created a racially hostile environment.

STATEMENT OF THE CASE

In the present case, Erebia complained to Chrysler on virtually a daily basis, for years, as to the racially hostile environment. Rather than alleviating this environment, the supervisors of Erebia threatened to cause economic harm to Erebia.

Chrysler was unwilling to devote any effort to alleviating this hostile and abusive environment, in contrast to the incredible effort of manipulating the legal system in order to obtain redress, having lost, upon the facts, at all lower levels.

Ohio law clearly permits the award of ten thousand dollars ($10,000.00) for compensatory damages and thirty thousand dollars ($30,000.00) for punitive damages, with interest thereon at the rate of ten and ten-hundredths (10.10%) percent.

FACTS

The jury explicitly found a hostile work environment and specifically found that the employer refused to address the hostile work environment. (Opinion Below, Appendix 25a) The court below specifically found that this determination was supported by substantial evidence and, indeed, that the testimony was uncontroverted that Erebia was subjected to racial slurs from February of 1977 to July of 1982. The court below specifically found ". . . clearly substantial evidence on both the elements of repeated slurs and management's tolerance and condonation of the situation." (Appendix 29a)

The trial court had charged the jury that before they could find for the plaintiff they had to find not only intentional and purposeful discrimination but

also a failure or refusal to instruct subordinate co-workers ". . . intentionally based on plaintiff's race." (Appendix 30a) The court below specifically found: "Management was aware of plaintiff's many complaints of harassment and condoned the situation by taking no steps to improve conditions and by seeking to intimidate plaintiff." (Appendix 38a)

MERITS OF PUNITIVE DAMAGES

The court below remanded this case back to the trial court with directions to award nominal compensatory damages. The court did not determine that Erebia suffered no damages. The court merely found that the proof as to the actual damages sustained was ". . . insufficient to support the verdict . . . ." (Appendix 43a; emphasis added.) The court specifically found that the trial court

had correctly charged on the issue of punitive damages--to require a finding that Chrysler's conduct was wanton or oppressive--and the court below found: "The jury's award for punitive damages was supported by substantial evidence." (Appendix 44a) The Court of Appeals specifically found ". . . Lenz's [a member of Chrysler management] threat that he would hurt plaintiff economically for pursuing his complaints of harassment" was a sufficient fact upon which to establish malice. (Appendix 45a) The decision of the Court of Appeals in upholding the award of punitive damages, together with nominal damages, is consistent with Ohio law. Bishop v. Grdina, 20 Ohio St.3d 26 (1985), rejected any consideration of punitive damages where ". . . the jury found no actual damages . . ." and there was ". . . no proof of actual

damages . . . ." (Emphasis original.) Seasons Coal Co., Inc. v. City of Cleveland, 10 Ohio St.3d 77 (1984), rested upon the fact that there was no "credible claim for compensatory damages" and that there was no proof "of any actual damages". Richard v. Hunter, 151 Ohio St. 185 (1949), the underpinings for both Bishop and Seasons Coal, supports the Court of Appeals' decision in this case. Headnote one of Richard requires "proof of actual damages" only. In headnote two, in order to reject punitive damages, the court held: ". . . a verdict returned by the jury, expressly denying the recovery of compensatory damages, is an affirmative finding that no actual damages were established." This is in direct contrast to Erebia, wherein actual damages were proven; and, while the court sustained an award of

actual damages, it directed the reduction of the amount to a nominal amount. Richard v. Hunter requires proof of actual damages only, not both proof and an award of actual damages greater than nominal in amount. The court adopted the following language: "According to the weight of authority, punitive damages may be recovered although the actual damages found are only nominal in amount." (The Supreme Court in Richard quoted rather at random from 15 Am.Jur. 707, pointing out the appropriateness of punitive damages in Erebia-like situations where actual damages were sustained but were reduced to a nominal amount because of the difficulty of measurement.) In Richard v. Hunter, a jury returned an award of zero damages. In that case, no actual damages were sustained. In the present case, actual damages were sustained and were so

determined by the jury, the trial judge, and the reviewing court. The law in Ohio is, therefore, clear--the decision of the Court of Appeals is correct.

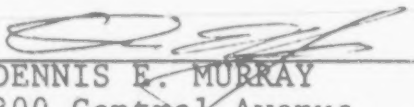
DENNIS E. MURRAY
300 Central Avenue
Sandusky, Ohio 44870
Telephone: 1-419-627-9700
Counsel for Respondent

MURRAY & MURRAY CO., L. P. A.
300 Central Avenue
Sandusky, Ohio 44870
Telephone: 1-419-627-9700
Of Counsel

CERTIFICATION

This is to certify that three copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari were served upon petitioner in the foregoing cause, by sending same by ordinary mail, with postage prepaid, on this 17th day of January, 1986, addressed as follows:

THOMAS L. DALRYMPLE
Fuller & Henry
1200 Edison Plaza
300 Madison Avenue
Post Office Box 2088
Toledo, Ohio 43603
Telephone: 1-419-255-8220
Attorneys for Petitioner



DENNIS E. MURRAY
300 Central Avenue
Sandusky, Ohio 44870
Telephone: 1-419-627-9700
Counsel for Respondent